

## REMARKS

In response to the restriction requirement imposed by the Examiner in the Office Action mailed on September 29, 2005, Applicants elected Group 2 as defined by claims 5-62. Claims 5 – 62 are currently pending in the referenced application.

### Allowed Claims

Applicants thank Examiner for the allowance of claims 31-37.

### Objections to the Claims

Claims 45-52 have been objected to and would be allowable if rewritten or amended to overcome the double patenting rejection or a terminal disclaimer timely filed as set forth in the Office Action. Claims 7, 12, 27, 28, 41, 42, 49, 50, 55, and 60 have been objected to and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants thank the Examiner for indicating claims 45-52 and claims 7, 12, 27, 28, 41, 42, 49, 50, 55, and 60 would be allowable if rewritten or amended appropriately to overcome each claims corresponding objection.

### Rejections under Provisional Obviousness-Type Double Patenting

Claims 5, 6, 8-11, 13-26, 29, 30, 38-40, 43-49, 51-54, 56-59, 61 and 62 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 31, 8, 24, and 1 of copending Application No. 09/999,503.

Applicants respectfully disagree with the nonstatutory obviousness-type double patenting; however, Applicants reserve the right to file a terminal disclosure once copending Application No. 09/999,503 or this application issue.

*Claim 45*

Applicants respectfully submit that claim 45 is nonobvious in view of and patentably distinct from claim 24 of copending Application No. 09/999,503. Claim 45 requires processing circuitry to receive a set of optically switched traffic, to extract a layer 2/3 traffic from optically switched traffic, to transmit the layer 2/3 traffic through a packet mesh and to transmit the layer 2/3 traffic into a pipe. Conversely, claim 24 of copending Application No. 09/999,503 requires processing circuitry to host a load balancing process, and to transmit traffic in accordance with the load balancing process.

Processing circuitry that receives optically switch traffic, extracts layer 2/3 traffic from optically switch traffic, transmits optically switched traffic through a packet mesh and transmits the layer 2/3 traffic into a pipe is nonobvious in view of and patently distinct from processing circuitry to host a load balancing process and to transmit in accordance with a load balancing process. Therefore, claim 45 is nonobvious in view of and patentably distinct from claim 24 of copending Application No. 09/999,503.

*Claims 46-49, 51, and 52*

Applicants respectfully submit that claims 46-49, 51, and 52 depend directly or indirectly on claim 45 and include all the limitations of claim 45. As such, claims 46-49, 51, and 52 are nonobvious in view of and patently distinct from claim 24 of copending Application No. 09/999,503 for at least the same reasons as claim 45.

### *Claim 38*

Applicants respectfully submit that claim 38 is nonobvious in view of and patentably distinct from claim 24 of copending Application No. 09/999,503. Claim 38 requires optical processing circuitry to transmit and receive optically switched traffic having a set of layer 2/3 traffic. Conversely, Claim 8 requires processing circuitry to host a load balancing process, to transmit in accordance with the load balancing process, and to encapsulate layer 2/3 traffic. Optical processing circuitry to transmit and receive optically switched traffic having a set of layer 2/3 traffic is nonobvious in view of and patentably distinct from processing circuitry to host a load balancing process, to transmit in accordance with the load balancing process, and to encapsulate layer 2/3 traffic. Therefore, claim 38 is nonobvious in view of and patentably distinct from claim 8 of copending Application No. 09/999,503.

### *Claims 39, 40, 43, and 44*

Applicants respectfully submit that claims 39, 40, 43, and 44 depend directly or indirectly on claim 38 and include all the limitations of claim 38. As such, claims 39, 40, 43, and 44 are nonobvious in view of and patentably distinct from claim 8 of copending Application No. 09/999,503 for at least the same reasons as claim 38.

### *Claims 5, 15, 23, and 53*

Applicants respectfully submit load balancing of layer 2/3 traffic of claims 1 and 31 from copending Application No. 09/999,503 is not equivalent to Applicants' claimed transmission of set layer 2/3 traffic in the pipe. Load balancing of layer 2/3 traffic cannot be interpreted as transmitting a set of layer 2/3 traffic because claims 1 and 31 of

copending Application No. 09/999,503 also require “transmitting the load balanced layer 2/3 traffic.” Therefore, claims 5, 15, 23, and 53 are nonobvious in view of and patentably distinct from claims 1 and 31 of copending Application No. 09/999,503.

*Claims 6, 8-11, 13, 14, 16-22, 24-26, 29, 30, 54, 56-59, 61, and 62*

Applicants respectfully submit that claims 6, 8-11, 13, 14, 16-22, 24-26, 29, 30, 54, 56-59, 61, and 62 depend directly or indirectly on claims 5, 15, 23, or 53 and include all the limitations of claims 5, 15, 23, or 53. As such, claims 6, 8-11, 13, 14, 16-22, 24-26, 29, 30, 54, 56-59, 61, and 62 are nonobvious in view of and patently distinct from claims 1 and 31 of copending Application No. 09/999,503 for at least the same reasons as claims 5, 15, 23, or 53.

Claim Rejections under 35 U.S.C. § 102(e)

Claims 5, 6, 8-11, 13-26, 29, 30, 53, 54, 56-59, 61 and 62 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,628,649 to Raj, et al. (“Raj”) cited by Applicant.

Applicant respectfully submits Raj fails to describe each and every element of the claims and requests reconsideration of the claims. Applicant respectfully reserves the right to swear behind Raj at a later time.

*Claims 5, 23, and 53*

Claims 5, 23, and 53 require allocating a pipe from part of a working channel and at least part of a protecting channel of a span of a bi-directional line switched ring (BLSR) and reducing the pipe's bandwidth when a failure occurs in the ring.

Raj describes using multiple label switch controllers, LSC (201-1 through 201-N in Figures 6 and 7 of Raj); thus, Raj provides redundancy for switch controllers in a data switch configured to use label switching. (Raj, Abstract). In one embodiment the routing redundancy can be accomplished by rerouting labeled data through a parallel IP network connected to the same switch (as illustrated in Figures 14A and 14B of Raj). Raj also describes the use of label switch controller redundancy across ports in the case that the data switch is only connected to one path. In this case, when one LSC fails the data is shifted to another LSC and rerouted on its ports (as illustrated in Figures 15A and 15B).

Because Raj fails to describe allocating a pipe from part of a working channel and at least part of a protecting channel of a span of a bi-directional line switched ring (BLSR) and reducing the pipe's bandwidth when a failure occurs in the ring, Raj fails to anticipate claims 5, 23, and 53.

#### *Claims 6-7, 24-30, and 54-62*

Applicant respectfully submits that claims 6-7, 24-30, and 54-62 depend directly or indirectly on claims 5, 23, or 53 and include all the limitations of claims 5, 23, or 53. As such, claims 6-7, 24-30, and 54-62 are not rendered unpatentable by Raj for at least the same reasons as claims 5, 23, or 53.

#### Claim Rejections under 35 U.S.C. § 103(a)

Claims 38-40, 43, and 44 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Raj in view of U.S. Patent No. 6,765,916 to Duvvuru et al. (“Duvvuru”) as cited by Applicant.

Applicant respectfully submits the combinations fail to describe each and every element of the claims and requests reconsideration of the claims.

Claim 38 requires a control card to reduce a pipe's bandwidth while there is a failure on the optical ring, and to restore the pipe's bandwidth while there is not a failure on the optical ring. Moreover, claim 38 requires an optical processing circuitry to transmit and receive a set of optically switched traffic.

Raj, as discussed above, fails to describe a control card a control card to reduce a pipe's bandwidth while there is a failure on the optical ring, and to restore the pipe's bandwidth while there is not a failure on the optical ring. Moreover, Raj fails to describe optical processing circuitry to transmit and receive a set of optically switched traffic.

Duvvuru describes a method and apparatus for processing data packets of differing protocols across different channels within signals. (Duvvuru, Abstract). This includes receiving at least one signal, which includes a number of channels that can include different protocols and configurations for the different protocols. (Duvvuru, Abstract). Duvvuru further describes processing data packets in each of the number of channels in a predefined order. (Duvvuru, Abstract).

Duvvuru fails to describe a control card a control card to reduce a pipe's bandwidth while there is a failure on the optical ring, and to restore the pipe's bandwidth while there is not a failure on the optical ring. Moreover, Duvvuru fails to describe optical processing circuitry to transmit and receive a set of optically switched traffic.

Because both Raj and Duvvuru do not describe a control card a control card to reduce a pipe's bandwidth while there is a failure on the optical ring, to restore the pipe's bandwidth while there is not a failure on the optical ring, and an optical processing

circuitry to transmit and receive a set of optically switched traffic, the combination fails to describe each and every element of claim 38.

*Claims 39-44*

Applicant respectfully submits that claims 39-44 depend directly or indirectly on claim 38 and include all the limitations of claim 38. As such, claims 39-44 are not rendered unpatentable by Raj for at least the same reasons as claim 38.

Conclusion

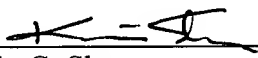
Applicants respectfully submit the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Daniel DeVos at (408) 720-8300.

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: 3 / 27, 2006

  
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Kevin G. Shao  
Reg. No. 45,095

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, California 90025-1026  
(408) 720-8300